UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ATLANTIC CASUALTY INSURANCE COMPANY	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	**CASE NO.**
DYNAMIC CONCRETE PUMPING, LLC Serve at: 18806 County Road 1130 St. James, Missouri 65559	)	
	)	
TIMOTHY A JONES Serve at: 18806 County Road 1130 St. James, Missouri 65559	)	
	)	
ORVILLE LICKLIDER Serve at: 26515 Highway 32 Belleview, MO 63623	)	
	)	
LISA LICKLIDER Serve at: 26515 Highway 32 Belleview, MO 63623	)	
	)	
DEFENDANTS.	)	

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff Atlantic Casualty Insurance Company (hereinafter "ACIC"), by and through undersigned counsel, pursuant to 28 U.S.C. §2201, and for its Complaint for Declaratory Judgment against defendants Dynamic Concrete Pumping, LLC ("Dynamic"), Timothy Jones, Orville Licklider, and Lisa Licklider, hereby states as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff ACIC is an insurance company organized and existing under the laws of the State of North Carolina and having its principal place of business in North Carolina.

2. ACIC is authorized to conduct insurance business in Missouri by the Missouri Department of Insurance, Financial Institutions & Professional Registration.

3. Defendant Dynamic is a Missouri limited liability company with its principal place of business located in Phelps County, Missouri, and can be found for service of process at the address stated above, and is therefore subject to the jurisdiction of the United States District Court for the Eastern District of Missouri.

4. Upon information and belief, the sole member and owner of Defendant Dynamic is Defendant Timothy Jones, whom, upon information and belief, is domiciled in state of Missouri.

5. Defendant Orville Licklider is an individual and, upon information and belief, currently resides in Crawford County, Missouri and is subject to process in Crawford County, and is therefore subject to the jurisdiction of the United States District Court for the Eastern District of Missouri.

6. Defendant Lisa Licklider is an individual and, upon information and belief, currently resides in Crawford County, Missouri and is subject to process in Crawford County, and is therefore subject to the jurisdiction of the United States District Court for the Eastern District of Missouri.

7. In their individual capacity, as well as in their capacity as representatives of the class of individuals entitled under Missouri law to recover for the wrongful death of Korey

Licklider, Defendants Orville Licklider and Lisa Licklider have filed an action in the Circuit Court of Cole County, Missouri seeking a determination of liability and damages in relation to the alleged wrongful death of their son Korey Licklider against Co-Defendants Dynamic, Timothy Jones, and others, with the following case caption *Licklider v. Dynamic Concrete Pumping, LLC, Et. al.* case number 17AC-CC00184 ("the underlying lawsuit"). A copy of the Petition filed in the underlying lawsuit is attached hereto as **Exhibit 1**.

8. Defendants Dynamic and Timothy Jones have tendered the underlying lawsuit to ACIC for defense and indemnity pursuant to the terms and conditions of a potentially applicable insurance policy issued by ACIC to Dynamic.

9. ACIC issued policy number L126001416 to Dynamic Concrete Pumping LLC ("the policy"), in effect between June 5, 2016 and June 5, 2017, a certified copy of which is attached hereto as **Exhibit 2**.

10. The United States District Court for the Eastern District of Missouri maintains jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds $75,000 exclusive of interests and costs, and the action is between citizens of different states.

11. The United States District Court for the Eastern District of Missouri maintains jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 2201(a), because this Complaint for Declaratory Judgment seeks the judicial declaration of the rights, statuses, and legal relations of and among the parties with regard to contracts of insurance and because an actual case or controversy of a justiciable nature exists among the parties.

12. Venue is proper in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(1) because multiple Defendants reside within the Eastern District.

13. Venue is proper in the Eastern Division of the United States District Court for the Eastern District of Missouri pursuant to Local Civil Rule 3-2.07 because there are multiple defendants and because one or more of the defendants resides in Crawford County, Missouri and because Crawford County is one of the counties comprising said Eastern Division.

Factual Background

14. ACIC incorporates by reference, as if fully set forth herein, all of the foregoing allegations contained in paragraphs 1 through 13 above.

15. On October 17, 2016, Korey Licklider died as a result of an injury sustained at a construction site in Cole County, Missouri.

16. The construction site in Cole County, Missouri that is the site of the accident giving rise to the underlying lawsuit for wrongful death, was a site at which various construction contractors were working to construct a new Dollar General Store.

17. Upon information and belief, at the time of his death, Korey Licklider was employed by Booker Foundation & Flatwork, LLC ("Booker").

18. At the time of the accident, Booker was engaged in the construction of the Dollar General Store.

19. At the time of the accident, upon information and belief, Korey Licklider was at the Dollar General construction site because of his employment with Booker.

20. Upon information and belief, Korey Licklider was acting in the course and scope of his employment at the time of his death.

Allegations in the Underlying Lawsuit

21. ACIC incorporates by reference, as if fully set forth herein, all of the foregoing allegations contained in paragraphs 1 through 21 above.

22. The underlying lawsuit is a civil action wherein Defendants Orville and Lisa Licklider, in their individual capacity and in their capacity as representatives of the class of individuals legally entitled to collect for the wrongful death of Korey Licklider, alleges that the defendants in the underlying action each and all contributed to cause, through their respective and collective negligence, the death of Korey Licklider.

23. Paragraph 3 of the underlying Petition attached as Exhibit 1 alleges in relevant part that the wrongful death of Korey Licklider ". . . arises from a construction site injury on October 17, 2016.

24. Paragraph 8 of the underlying Petition attached as Exhibit I alleges in relevant part that, ". . . the defendants and each of them, acting individually and on their own behalf, and acting as the agent, servant, and employee of each other, operating within the scope and course of said agency or employment in each of their actions hereinafter set forth, all combined, concurred, and contributed to cause the death of Korey Licklider."

25. Paragraph 9 of the underlying Petition attached as Exhibit I alleges in relevant part that, Defendant Timothy Jones, acting in the course and scope of his employment with Defendant Dynamic, failed ". . . to keep a careful lookout and thereby causing, allowing and

permitting said concrete pumper truck's outrigger stabilizer leg to close upon Korey Eugene Licklider causing his death. . ."

The ACIC Policy

26. ACIC incorporates by reference, as if fully set forth herein, all of the foregoing allegations contained in paragraphs 1 through 25 above.

27. The policy of insurance identified in paragraph No. 10 above contains, among others, the following particularly pertinent terms and conditions:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

[…]

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

ATLANTIC CASUALTY INSURANCE COMPANY
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF INJURY TO EMPLOYEES, CONTRACTORS AND EMPLOYEES OF CONTRACTORS

> […]
>
> This insurance does not apply to:
>
> […]
>
> **(ii)** "Bodily injury" to any "contractor" for which any insured may become liable in any capacity; or
>
> **(iii)** "Bodily injury" sustained by any spouse, child, parent, brother or sister of any "employee" of any insured, or of a "contractor" as a consequence of any injury to any person as set forth in paragraphs **(i)** and **(ii)** of this endorsement.
>
> This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care and loss of services.
>
> […]
>
> As used in this endorsement, "contractor" shall include, but is not limited to, any independent contractor or subcontractor of any insured, any general contractor, any developer, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and materials of any kind for these persons or entities mentioned herein.

COUNT I – DECLARATORY JUDGMENT

28. Plaintiff incorporates by reference and reasserts each and every allegation contained in in paragraphs 1 - 27 above.

29. The underlying petition in the underlying lawsuit seeks a determination of liability and damages resulting from bodily injury, including death, sustained by Korey Licklider on October 17, 2016.

30. The death of Korey Licklider is alleged to result from a construction site accident.

31. At the time of his death, upon information and belief, Korey Licklider was acting in the course and scope of his employment with Booker.

32. Upon information and belief, Booker was a subcontractor of a general contractor or developer, hired to work on the construction of the Dollar General Store at the site at which the accident giving rise to the underlying lawsuit occurred.

33. Upon information and belief, Korey Licklider was, at the time of his death, a "contractor," as that word is defined in the policy as excerpted above in paragraph 28.

34. Dynamic was a sub-subcontractor of Booker, hired to work on the construction of the Dollar General Store at the site at which the accident giving rise to the underlying lawsuit occurred.

35. Defendant Timothy Jones was, at all relevant times, the owner and operator of Dynamic and was an employee of Dynamic.

36. The underlying petition in the underlying lawsuit alleges that all actionable acts or omissions of Defendant Timothy Jones which allegedly contributed to cause the death of Korey Licklider were undertaken in the course and scope of his employment with Dynamic.

37. All damages for bodily injury, including death, alleged in the underlying petition in the underlying lawsuit are for bodily injury, including death, to a contractor for which ACIC's insureds, Defendants Dynamic and Timothy Jones may be liable.

38. The policy identified in paragraph 10 above, excerpted in paragraph 28 above, and attached as Exhibit 2, excludes coverage for, in stating "this insurance does not apply to . . .," bodily injury to any contractor for which any insured may become liable in any capacity.

39. The exclusion described in the preceding paragraph and excerpted in paragraph 28 above applies to bar coverage to all insureds for all damages sought in the underlying lawsuit.

40. Any duty of ACIC to defend Defendant Dynamic or to defend Defendant Timothy Jones, under the policy, in the underlying lawsuit, is negated by the applicability of the exclusion described in paragraph 38 above.

41. ACIC does not owe a duty to defend Defendant Dynamic in the underlying lawsuit under the policy.

42. ACIC does not owe a duty to defend Timothy Jones in the underlying lawsuit.

WHEREFORE, Plaintiff prays that the Court:

(i) Enter judgment on Count I of this Complaint for Declaratory Judgment;

(ii) Declare that the insurance policy attached as Exhibit 2, identified in paragraph 10, and excerpted in paragraph 28 above, does not provide liability coverage to Defendants Dynamic or Timothy Jones for the claims against them in the underling lawsuit;

(iii) Declare that Plaintiff owes no duty to defend or indemnify Defendants Dynamic or Timothy Jones in the underlying lawsuit;

(iv) Award Plaintiff its costs and expenses herein; and

(v) Grant to Plaintiff such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Wm. Clayton Crawford
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